

OMB NO. 1820-0030
Expires: 04/30/06

**ANNUAL STATE APPLICATION UNDER PART B OF THE
INDIVIDUALS WITH DISABILITIES EDUCATION ACT AS AMENDED IN 2004
FOR FEDERAL FISCAL YEAR 2006**

CFDA No. 84.027A and 84.173A

ED FORM No. 9055

**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION PROGRAMS
Washington, DC 20202-2600**

Section I**A. Submission Statement for Part B of IDEA**

Please select 1 or 2 below. Check 3 if appropriate.

1. ☐ The State provides assurances that it has in effect policies and procedures to meet all eligibility requirements of Part B of the Act as found in PL 108-446, the Individuals with Disabilities Education Improvement Act of 2004 and applicable regulations (IDEA). The State is able to meet all assurances found in Section II.A of this Application.
2. ☒ The State cannot provide assurances for all eligibility requirements of Part B of the Act as found in PL 108-446. The State has determined that it is unable to make the assurances that are checked as 'No' in Section II.A. However, the State assures that throughout the period of this grant award the State will operate consistent with all requirements of IDEA in PL 108-446 and applicable regulations. The State will make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of the IDEA, as amended, as soon as possible, and not later than June 30, 2007. The State has included the date by which it expects to complete necessary changes associated with assurances marked 'No'. (Refer to Assurances found in Section II.A.)¹

Optional:

3. ☐ The State is submitting modifications to State policies and procedures previously submitted to the Department. These modifications are: (1) deemed necessary by the State, for example when the State revises applicable State law or regulations; (2) required by the Secretary because there is a new interpretation of the Act or regulations by a Federal court or the State's highest court; and/or (3) because of an official finding of noncompliance with Federal law or regulations.

B. Conditional Approval for Current Grant Year

If the State received conditional approval for the current grant year, check the appropriate statement below:

1. ☐ The State previously has submitted documentation of completion of all issues identified in the FFY 2005 conditional approval letter.
2. ☐ The State is attaching documentation of completion of all issues identified in the FFY 2005 conditional approval letter. *(Attach documentation showing completion of all issues.)*
3. ☐ The State has not completed all issues identified in the FFY 2005 conditional approval letter. *(Attach documentation showing completion of any issues and a list of items not yet completed.)*

¹ A State will be granted conditional approval until it can provide all assurances.

Section II**A. Assurances**

The State makes the following assurances and provisions as required by Part B of the Individuals with Disabilities Education Act. (20 U.S.C. 1411-1419)

Check and enter date(s) as applicable		Assurances (20 U.S.C. 1411-1419)
Yes (Assurance is given.)	No (Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)	
X		1. As applicable, the assurance in OMB Standard Form 424B (Assurances for Non-Construction Programs), relating to legal authority to apply for assistance; access to records; conflict of interest; merit systems; nondiscrimination; Hatch Act provisions; labor standards; flood insurance; environmental standards; wild and scenic river systems; historic preservation; protection of human subjects; animal welfare; lead-based paint; Single Audit Act; and general agreement to comply with all Federal laws, executive orders and regulations.
X		2. A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled, in accordance with 20 U.S.C. 1412(a)(1).
X		3. The State has established a goal of providing a full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal. (20 U.S.C. 1412(a)(2))
X		4. All children with disabilities residing in the State, including children with disabilities who are homeless or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services in accordance with 20 U.S.C. 1412(a)(3).
	June 30, 2007	5. An individualized education program, or an individualized family service plan that meets the requirements of 20 U.S.C. 1436(d), is developed, reviewed, and revised for each child with a disability in accordance with 20 U.S.C. 1414(d). (20 U.S.C. 1412(a)(4))
X		6. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes,

Check and enter date(s) as applicable		
Yes (Assurance is given.)	No (Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)	Assurances (20 U.S.C. 1411-1419)
		separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily in accordance with 20 U.S.C. 1412(a)(5)(A)-(B).
	June 30, 2007	7. Children with disabilities and their parents are afforded the procedural safeguards required by 20 U.S.C. 1415 and in accordance with 20 U.S.C. 1412(a)(6).
	June 30, 2007	8. Children with disabilities are evaluated in accordance with subsections (a) through (c) of 20 U.S.C. 1414. (20 U.S.C. 1412(a)(7))
X		9. Agencies in the State comply with 20 U.S.C. 1417(c) (relating to the confidentiality of records and information). (20 U.S.C. 1412(a)(8))
X		10. Children participating in early intervention programs assisted under Part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with 20 U.S.C. 1437(a)(9). By the third birthday of such a child, an individualized education program or, if consistent with 20 U.S.C. 1414(d)(2)(B) and 20 U.S.C. 1436(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under 20 U.S.C. 1435(a)(10). (20 U.S.C. 1412(a)(9))
	June 30, 2007	11. To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the requirements found in 20 U.S.C. 1412(a)(10)(A)-(C) unless the Secretary has arranged for services to those children under subsection (f) [By pass].
	June 30, 2007	12. The State educational agency is responsible for ensuring that the requirements of Part B are met according to 20 U.S.C. 1412(a)(11)(A)-(C).

Check and enter date(s) as applicable		Assurances (20 U.S.C. 1411-1419)
Yes (Assurance is given.)	No (Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)	
X		13. The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) of 20 U.S.C. 1412(a)(12) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall meet the requirements found in 20 U.S.C. 1412(a)(12)(A)-(C).
X		14. The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing. (20 U.S.C. 1412(a)(13))
	June 30, 2007	15. The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities as noted in 20 U.S.C. 1412(a)(14)(A)-(E).
X		16. The State has established goals for the performance of children with disabilities in the State that meet the requirements found in 20 U.S.C. 1412(a)(15)(A)-(C).
X		17. All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs as noted in 20 U.S.C. 1412(a)(16)(A)-(E).
X		18. Funds paid to a State under this part will be expended in accordance with all the provisions of Part B including 20 U.S.C. 1412(a)(17)(A)-(C).
X		19. The State will not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year in accordance with 20 U.S.C. 1412(a)(18)(A)-(D).

Check and enter date(s) as applicable		Assurances (20 U.S.C. 1411-1419)
Yes (Assurance is given.)	No (Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)	
X		20. Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities. (20 U.S.C. 1412(a)(19))
X		21. In complying with 20 U.S.C. 1412(a)(17) and (18), a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to local educational agencies, including funding based on student attendance or enrollment, or inflation. (20 U.S.C. 1412(a)(20))
X		22. The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State as found in 20 U.S.C. 1412(a)(21)(A)-(D).
	January 2007	23. The State educational agency examines data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities in accordance with 20 U.S.C. 1412(a)(22)(A)-(B).
	June 30, 2007	24a. The State adopts the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after the publication of the National Instructional Materials Accessibility Standard in the Federal Register in accordance with 20 U.S.C. 1412(a)(23)(A) and (D).

Check and enter date(s) as applicable		Assurances (20 U.S.C. 1411-1419)
Yes (Assurance is given.)	No (Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)	
		24b. (Note: Check either "24b.1" or "24b.2" whichever applies.
X		<p>24b.1 The State educational agency coordinates with the National Instructional Materials Access Center and not later than two years after the date of enactment of the IDEIA of 2004, the SEA as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials enters into a written contract with the publisher of the print instructional materials to:</p> <ul style="list-style-type: none"> • require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center, electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or • purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats. (20 U.S.C. 1412(a)(23)(C))
		24b.2 The State Educational Agency has chosen not to coordinate with the National Instructional Materials Access Center but assures that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. (20 U.S.C. 1412(a)(23)(B))
	June 30, 2007	25. The State has in effect, consistent with the purposes of the IDEA and with 20 U.S.C. 1418(d), policies and procedures designed to prevent the inappropriate over identification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in 20 U.S.C. 1401. (20 U.S.C. 1412(a)(24))
	June 30, 2007	26. The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation under subsection (a) or (c) of 20 U.S.C. 1414, or receiving services under the IDEA as described in 20 U.S.C. 1412(a)(25)(A)-(B).
X		27. The State shall distribute any funds the State does not reserve under 20 U.S.C. 1411(e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under 20 U.S.C. 1413 for use in accordance with this part as provided for in 20 U.S.C. 1411(f)(1)-(3).

Check and enter date(s) as applicable		Assurances (20 U.S.C. 1411-1419)
Yes (Assurance is given.)	No (Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)	
X		28. The State shall provide data to the Secretary on any information that may be required by the Secretary. (20 U.S.C. 1418(a)(3))
X		29. The State, local educational agencies, and educational service agencies shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds. (34 CFR §76.702)
X		30. The State will continue to comply with the regulations that are still applicable and currently in place.

B. Certifications

The State Educational Agency is providing the following certifications:

Yes	
X	<p>1. The State certifies that ED Form 80-0013, <i>Certification Regarding Lobbying</i>, is on file with the Secretary of Education.</p> <p>With respect to the <i>Certification Regarding Lobbying</i>, the State recertifies that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; that the State shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 CFR Part 82, Appendix B); and that the State Agency shall require the full certification, as set forth in 34 CFR Part 82, Appendix A, in the award documents for all sub awards at all tiers.</p>
X	<p>2. The State certifies that certifications in the Education Department General Administrative Regulations (EDGAR) at 34 CFR §80.11 relating to State eligibility, authority and approval to submit and carry out the provisions of its State application, and consistency of that application with State law are in place within the State.</p>
X	<p>3. The State certifies that the arrangements to establish responsibility for services pursuant to 20 U.S.C. 1412(a)(12)(A) are current. This certification must be received prior to the expenditure of any funds reserved by the State under 20 U.S.C. 1411(e)(1).</p>

C. Statement

I certify that the State of **Montana** can make the assurances checked as 'yes' in Section II.A and the certifications required in Section II.B and Section II.C of this application. These provisions meet the requirements of the Part B of the Individuals with Disabilities Education Act as found in PL 108-446. The State will operate its Part B program in accordance with all of the required assurances and certifications.

If any assurances have been checked 'no,' I certify that the State will operate throughout the period of this grant award consistent with the requirements of the IDEA as found in PL 108-446 and any applicable regulations, and will make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of the IDEA, as amended, as soon as possible, and not later than June 30, 2007. (34 CFR §76.104)

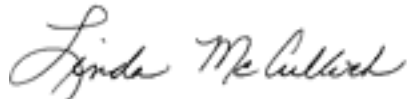
I, the undersigned authorized official of the **Montana Office of Public Instruction**, am designated by the Governor of this State to submit this application for FFY **2006** funds under Part B of the Individuals with Disabilities Education Act (IDEA).

Printed/Typed Name and Title of Authorized Representative of the State:

Linda McCulloch

Superintendent of Public Instruction

Signature:



Date: **February 17, 2006**

Section III

Description of Use of Funds Under Part B of the Individuals with Disabilities Education Act - 20 U.S.C. 1411(e)(5)

Describe how the amount retained by the State educational agency under 20 U.S.C. 1411(e)(1) will be used to meet the following activities under Part B. (20 U.S.C. 1411(e)(1)-(3), (6) and (7)) The Department annually identifies for States the maximum amounts that a State may retain under Section 1411(e)(1) and (2).² The dollar amounts listed by the State in this chart for administration and for other State activities should add up to less or equal to the dollar amount provided to the State by the Department for each of these activities.

FOR ADMINISTRATIVE ACTIVITIES UNDER PART B		ENTER DOLLAR AMOUNTS
For the purpose of administering this part, including 20 U.S.C. 1411(e)(3), 20 U.S.C. 1419, and the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities. (20 U.S.C. 1411(e)(1)(A))	a.	\$500,000
The administration of Part C of IDEA, if the SEA is the Lead Agency for the State under Part C. (20 U.S.C. 1411 (e)(1)(D))	b.	\$0
A State may use funds the State reserves for administration that are the result of inflationary increases described in 20 U.S.C. 1411(e)(1)(B) for the following activities: (20 U.S.C. 1411(e)(6))		
For support and direct services, including technical assistance, personnel preparation, and professional development and training.	c.	\$0
To assist local educational agencies in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities.	d.	\$0
To assist local educational agencies in meeting personnel shortages.	e.	\$0
To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.	f.	\$0
Flexibility in Using Funds for Part C (20 U.S.C. 1411(e)(7))		
Any State eligible to receive a grant under 20 U.S.C. 1419 may use funds made available under 20 U.S.C. 1411(e)(1)(A), 20 U.S.C. 1411(f)(3), or 20 U.S.C. 1419(f)(5) to develop and implement a State policy jointly with the lead agency under Part C and the State educational agency to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy,	g.	\$0

² Each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under this section for fiscal year 2004 or \$800,000 (adjusted in accordance with 20 U.S.C. 1411(e)(1)(B)), whichever is greater; and each outlying area may reserve for each fiscal year not more than 5 percent of the amount the outlying area receives under 20 U.S.C. 1411(b)(1) for the fiscal year or \$35,000, whichever is greater.

For each fiscal year beginning with fiscal year 2005, the Secretary shall cumulatively adjust: 1) the maximum amount the State was eligible to reserve for State administration under this part for fiscal year 2004; and 2) \$800,000, by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

FOR ADMINISTRATIVE ACTIVITIES UNDER PART B		ENTER DOLLAR AMOUNTS
language, and numeracy skills) in accordance with Part C to children with disabilities who are eligible for services under 20 U.S.C. 1419 and who previously received services under Part C until such children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate.		
Establishment of High Cost Fund (20 U.S.C. 1411(e)(3)(B)(i))		

FOR OTHER STATE-LEVEL ACTIVITIES		ENTER DOLLAR AMOUNTS
Required Activities Funds reserved under 20 U.S.C. 1411(e)(2)(A) shall be used to carry out the following activities:		
For monitoring, enforcement, and complaint investigation.	h.	\$400,000
To establish and implement the mediation process required by 20 U.S.C. 1415(e), including providing for the cost of mediators and support personnel.	i.	\$40,000
Authorized Activities Funds reserved under 20 U.S.C. 1411(e)(2)(A) may be used to carry out the following activities:		
For support and direct services, including technical assistance, personnel preparation, and professional development and training.	j.	\$913,187
To assist local educational agencies in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities.	k.	\$60,000
To assist local educational agencies in meeting personnel shortages.	l.	\$250,000
To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.	m.	\$60,000
To support paperwork reduction activities, including expanding the use of technology in the IEP process.	n.	\$300,000
To improve the use of technology in the classroom by children with disabilities to enhance learning.	o.	\$0
To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities.	p.	\$20,000
Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of children with disabilities to postsecondary activities.	q.	\$75,000
Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with	r.	\$0

FOR OTHER STATE-LEVEL ACTIVITIES		ENTER DOLLAR AMOUNTS
disabilities in charter schools.		
To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with Sections 1111(b) and 6111 of the Elementary and Secondary Education Act of 1965.	s.	\$55,000
To provide technical assistance to schools and local educational agencies, and direct services, including supplemental educational services as defined in Section 1116(e) of the Elementary and Secondary Education Act of 1965 to children with disabilities, in schools or local educational agencies identified for improvement under Section 1116 of the Elementary and Secondary Education Act of 1965 on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under Section 1111(b)(2)(G) the Elementary and Secondary Education Act of 1965.	t.	\$55,000
Local Educational Agency Risk Pool (20 U.S.C. 1411(e)(3)(A)): For the purpose of assisting local educational agencies (including a charter school that is a local educational agency or a consortium of local educational agencies) in addressing the needs of high need children with disabilities, each State shall have the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for State-level activities under 20 U.S.C. 1411(e)(2)(A)		
To establish and make disbursements from the high cost fund to local educational agencies in accordance with 20 U.S.C. 1411(e)(3) during the first and succeeding fiscal years of the high cost fund; and	u.	\$0
To support innovative and effective ways of cost sharing by the State, by a local educational agency, or among a consortium of local educational agencies, as determined by the State in coordination with representatives from local educational agencies, subject to 20 U.S.C. 1411(e)(3)(B)(ii) [Amount may not be more than 5% of the amount reserved for the LEA Risk Pool.].	v.	\$0
Establishment of High Cost Fund (20 U.S.C. 1411(e)(3)(B)(i))		
A State shall not use any of the funds the State reserves pursuant to 20 U.S.C. 1411(e)(3)(A)(i), <u>but may use the funds the State reserves under 20 U.S.C. 1411(e)(1), to establish and support the high cost fund.</u>		

Describe the process used to get input from LEAs regarding the distribution of amounts among activities described in the above charts to meet State priorities. [20 U.S.C. 1411(e)(5)(B)]

Distribution of amounts among the activities described above is based on broad stakeholder input. Local education agency (LEA) needs are identified through their involvement in the state's general supervision procedures, representation on the State Special Education Advisory Panel and the State Council for Comprehensive System of Personnel Development (CSPD). The state CSPD Council's membership consists of representatives of the following: Institutions of Higher Education, parents, paraprofessionals, related services providers, general and special education teachers, IDEA Part C, state agencies, professional organizations, and Indian Education for All. In addition, the State Director of Special Education meets with directors of special education on a twice-yearly basis and further input is gained from comments made through the public participation process.

Section IV

State Administration

Section 608(a) of the IDEA requires each State that receives funds under this title to:

- (1) ensure that any State rules, regulations, and policies relating to this title conform to the purposes of this title;
- (2) identify in writing to local educational agencies located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by this title and Federal regulations; and
- (3) minimize the number of rules, regulations, and policies to which the local educational agencies and schools located in the State are subject under this title.

States must attach to this application a list identifying any rule, regulation, or policy that is State-imposed (not required by IDEA or Federal regulations). In addition, the State is required to inform local education agencies in writing of such State-imposed rules, regulation or policy. (20 U.S.C. 1407(a))

Montana Special Education Statutes And Rules That Are State Imposed And Not Required By IDEA Or Federal Regulations

Following the publication of the final regulations under IDEA 1997, Montana repealed the majority of its administrative rules of Montana which governed the conduct of special education and adopted the federal regulations. Administrative rules were adopted only when it was determined that more clarity was needed than provided by the federal regulation; federal regulation required the state to adopt procedures to implement the Act and/or a rule was required to ensure the rights of a child.

Following is a list of the state administrative rules which have been identified as imposing some additional requirements on LEAs which are not specifically addressed in current final federal regulation or IDEA 2004. Following each of the rules is a comment as to why the rule was adopted and its implications for LEAs.

10.16.3320 REFERRAL

(1) A local educational agency shall establish a referral process which includes a method for collecting information to determine whether comprehensive educational evaluation is necessary and the types of evaluations warranted.

(a) The referral must include a statement of the reasons for referral, including documentation of general education interventions, and the signature of the person making the referral.

(b) Referral shall document the suspicion that the student may have a disability which adversely affects the student's educational performance to the degree which requires special education and related services.

(c) If a comprehensive educational evaluation in accordance with 34 CFR 300.531 through 300.536 is warranted, the local educational agency shall obtain consent of the parent before conducting a comprehensive educational evaluation.

(2) If, after receiving a referral, a child study team determines that a comprehensive evaluation is not necessary, the local educational agency shall notify the parent in writing of its decision, including a description of any options the local educational agency considered and the reasons why those options were rejected and a full explanation of all of the procedural safeguards available under 34 CFR 300.500 through 300.529.

(History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

Comment: Portions of the above rule are state imposed (see underlined). The IDEA 2004 uses the terminology “*request for initial evaluation*.” In Montana, a request for initial evaluation is referred to as “referral” to special education. This rule was adopted to document the request for initial evaluation and to establish standards for documenting why there is a reason to suspect the presence of a disability. The documentation required by this administrative rule is considered to be essential when planning the evaluation to ensure consistency with IDEA 2004 requirements that the child is assessed in all areas of suspected disability.

10.16.3321 COMPREHENSIVE EDUCATIONAL EVALUATION PROCESS

(1) Before initial provision of special education and related services, a comprehensive and individualized evaluation of the student's educational needs shall be conducted in accordance with the requirements of 34 CFR 300.531 through 300.543.

(2) For initial evaluations, the child study team report shall address:

(a) The results of assessments in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities; and

(b) The data necessary to address criteria established in ARM 10.16.3010 through 10.16.3022.

(3) For all initial evaluations and re-evaluations, the child study team report shall address a review of existing evaluation data on the student, including:

(a) Evaluations and information provided by the parents of the student;

(b) Current classroom-based assessments and observations which include the student's involvement and progress in the general curriculum; and

(c) Observations by teachers and related services providers.

(4) The child study team shall determine whether the evaluation is adequate and whether the student has a disability which adversely affects the student's involvement and progress in the general curriculum and because of that disability needs special education.

(5) The child study team shall prepare a written report of the results of the evaluation. The report shall include the results of assessments and shall include statements of implications for educational planning in terms understandable to all team members.

(6) All child study team reports shall include a summary statement of the basis for making the determination whether the student has a disability and needs special education and related services.

(7) All child study team reports will identify a disability category or categories for each student with a disability consistent with 20-7-401, MCA. This identification of a disability category is for the purposes of data reports required by the office of public instruction.

(8) Each participant of the child study team shall be provided an opportunity to submit a separate statement of conclusions if the report does not reflect the conclusions of the participant.

(9) A copy of the report shall be provided to the parent.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

Comment: The majority of the language in this rule is consistent with IDEA 2004 and current final federal regulations and does not impose any additional requirements on LEAs. However, there are portions of the rule (see underlined) that are state imposed.

The IDEA 2004 states "Review of Existing Evaluation Data-As part of an initial evaluation (if appropriate)...". When this administrative rule was developed and consequently adopted, stakeholders felt it important that a review of existing data be completed for all evaluations and documented on the child study team report. They determined that the terminology "*if appropriate*" could potentially lead to inconsistency in practice, as well as a missed opportunity to include information that is particularly relevant in making educational decisions.

The IDEA 2004 refers to the IEP team as the team which conducts both the evaluations/reevaluation and instructional planning. In Montana, the evaluation team (CST) and the instructional planning team (IEP) are identified as separate teams, although they primarily consist of the same members, and are given different responsibilities. The underlined language in (5) above was determined necessary by stakeholders to ensure that the information from the evaluation team was sufficiently documented to enable the IEP team to develop an appropriate instructional plan for the student. This is consistent with the requirements under IDEA 2004 which requires that 'assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child...".

10.16.3322 COMPOSITION OF A CHILD STUDY TEAM

- (1) The child study team is a group of individuals that determines whether a student with disabilities is eligible for special education and related services. The child study team includes the following members:
- (a) The parents of the student;
 - (b) At least one general education teacher of the student if the student is or may be participating in the general education environment;
 - (c) At least one special education teacher or, if appropriate, at least one special education provider;
 - (d) An administrative representative or designee of the local educational agency who:
 - (i) is qualified to provide, or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities;
 - (ii) is knowledgeable about the general curriculum; and
 - (iii) is knowledgeable about the availability of resources;
 - (e) At least one teacher or other specialist with knowledge in the area of suspected disability who can interpret the instructional implications of evaluation results. This individual may be a member of the team described in (1)(a) through (f). For specific disabilities, the following specialists or teachers are required for initial evaluation:
 - (i) emotional disturbance, traumatic brain injury, specific learning disability or cognitive delay - a school psychologist;
 - (ii) speech-language impairment, deaf/blindness, traumatic brain injury - a speech-language pathologist;
 - (iii) autism - a school psychologist and speech-language pathologist; and
 - (iv) deafness or hearing impairment - a speech-language pathologist or audiologist;
 - (f) At the discretion of the parent or the local educational agency, other individuals who have knowledge or special expertise regarding the student; and
 - (g) The student, when appropriate.
- (2) The local educational agency shall invite other specialists when such specialists are needed to complete a comprehensive evaluation.

(History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD, 1999 MAR p. 69, Eff. 1/15/99; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

Comment: Portions of this rule are state imposed (see portions underlined). The IDEA 2004 requires that assessments "are administered by trained and knowledgeable personnel..." and that the determination of whether the child is a child with a disability "shall be made by a team of qualified professionals and the parent...". When the rule was developed, and consequently adopted, stakeholders agreed that clear guidance was needed to ensure the appropriate 'qualified' professionals were included on each child study team.

10.16.3346 AVERSIVE TREATMENT PROCEDURES

(1) Positive behavioral interventions based on the results of a functional behavioral assessment shall serve as the foundation for any program utilizing aversive procedures to address the behavioral needs of students. Aversive treatment procedures may be appropriate for an individual student who exhibits behaviors which pose a risk of physical harm to the student or others, or a risk of significant damage to property, or significantly disruptive or dangerous behaviors which cannot be modified solely through the use of positive behavioral interventions. Aversive treatment procedures must be designed to address the behavioral needs of an individual student, be approved by the IEP team, and may not be used as punishment, for the convenience of staff, or as a substitute for positive behavioral interventions.

- (2) Aversive treatment procedures are defined as:
- (a) physical restraint, other than as provided in 20-4-302, MCA, when the IEP team has determined that the frequency, intensity or duration of the restraint warrants an aversive treatment procedure; and
 - (b) isolation time-out which results in the removal of a student to an isolation room under the following conditions:
 - (i) the student is alone in the isolation room during the period of isolation;
 - (ii) the student is prevented from exiting the isolation room during the period of isolation;
 - (iii) the door to the isolation room remains closed during the period of isolation; and
 - (iv) the student is prohibited from participating in activities occurring outside the isolation room and from interacting with other students during the period of isolation.
 - (3) Any student in isolation timeout must be under the direct constant visual observation of a designated staff person throughout the entire period of isolation.
 - (4) The following procedures are prohibited:
 - (a) any procedure solely intended to cause physical pain;
 - (b) isolation in a locked room or mechanical restraint, except in residential treatment facilities and psychiatric hospitals as defined in 20-7-436, MCA, when prescribed by a physician as part of a treatment plan and when implemented in compliance with relevant federal and state law;
 - (c) the withholding of a meal for a period of greater than one hour from its scheduled starting time;
 - (d) aversive mists, noxious odors, and unpleasant tastes applied by spray or other means to cause an aversive physical sensation; and
 - (e) mechanical restraint that physically restricts a student's movement through the use upon the student of any mechanical or restrictive device which is not intended for medical reasons.
 - (5) Exclusion time-out is not considered an aversive treatment procedure. Exclusion time-out is defined as any removal of a student from a regularly scheduled activity for disciplinary purposes that does not result in placing the student in an isolation room under all of the conditions described in (2)(b).
 - (6) IEPs may include the use of aversive treatment procedures only when:
 - (a) subsequent to a functional behavioral assessment, a series of no less than two written positive behavioral intervention strategies, which were designed to target the behavior to be changed, were previously implemented;
 - (b) the IEP team includes a person trained and knowledgeable about best practices in the application of positive behavioral interventions, aversive treatment procedures and nonaversive alternatives for de-escalation of behaviors; and
 - (c) a written behavioral intervention plan using aversive treatment procedures is developed and incorporated as a part of the IEP.
 - (7) A behavioral intervention plan using aversive treatment procedures shall:
 - (a) include a statement describing no less than two positive behavioral intervention strategies previously attempted and the results of these interventions, as described in (6)(a);
 - (b) describe the target behavior(s) that will be consequented with the use of the aversive treatment procedure(s);
 - (c) include short-term objective(s) with measurable criteria stating the expected change in the target behavior(s);
 - (d) provide a written description of the aversive treatment procedure(s);
 - (e) specify a time limit for the use of the aversive treatment procedure for any one instance;
 - (f) include data collection procedures for recording each application of the aversive treatment(s);
 - (g) state when the IEP team will meet to review the ongoing use, modification or termination of the aversive procedure;
 - (h) designate an individual responsible for ongoing review and analysis of the data on the target behavior;
 - (i) state how the student's parents will be regularly informed of the progress toward the short-term objectives in the IEP at a frequency no less than is required in 34 CFR 300.347; and
 - (j) state whether any standard school disciplinary measures are waived.
 - (8) When an aversive treatment plan is incorporated in the IEP, the parents must be informed that their consent to the IEP includes consent for the aversive treatment plan. Failure to obtain consent is subject to due process proceedings under ARM 10.16.3507 through 10.16.3523.
- (History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

Comment: The above rule is state imposed and not required by IDEA 2004. The rule was adopted, at the request of stakeholders, to ensure the rights of children are protected, and that children are not subjected to aversive procedures as punishment, for the convenience of staff, or as a substitute for positive behavioral interventions.

10.16.3560 SPECIAL EDUCATION RECORDS

- (1) School records and confidentiality of information must follow the provisions under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations at 34 CFR, part 99, and must follow the provisions established for special education under IDEA and its implementing regulations at 34 CFR 500.560 through 500.577.
- (2) Each special education record shall include access log, referral, permission for evaluation, evaluation data including summaries of assessments, test protocols and other information that are not subject to sole possession requirements of FERPA, child study team reports, individualized education programs, and periodic reviews of the individualized education program.
- (History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93; AMD & TRANS, 2000 MAR p. 1048, Eff. 7/1/00.)

Comment: The underlined language in (2) of the above administrative rule is state imposed. The purpose of the language is to ensure a student's special education record contains all of the documentation necessary to demonstrate that the requirements under IDEA have been addressed for the student, and that parental rights have been addressed. The requirement also

assists parents in knowing what special education documentation is included in a student's special education record.